

# Exhibit 4

Page 1

1

2 UNITED STATES DISTRICT COURT

3

EASTERN DISTRICT OF TEXAS

4

SHERMAN DIVISION

5

- - -

6

THE STATE OF TEXAS, et al.,

7

Plaintiffs,

8

v. Civil Action No.

9

GOOGLE LLC, 4:20-cv-00957-SDJ

10

Defendant.

11

- - -

12

April 5, 2024

13

- HIGHLY CONFIDENTIAL -

14

Videotaped deposition of

15

[REDACTED], held at Freshfields,

16

Bruckhaus, Deringer, 170 Greenwich Street,

17

New York, New York, commencing at 8:00

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a.m. EDT, on the above date, before Marie

19

Foley, a Registered Merit Reporter,

20

Certified Realtime Reporter and Notary

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Public.

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Job No. MDLG6626470

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<p style="text-align: right;">Page 242</p> <p>1 the following question: What has been the 2 impact of the Invite Media acquisition by 3 Google a year ago? Any surprises? 4 A selection of responses from 5 industry execs is below. 6 7 Did I read that right? 8 A. Yes, I believe you read that as 9 it's written. 10 Q. So, going to the third page, 11 it's marked at the bottom right-hand 12 corner 3 out of 10, do you see the name 13 Bill Wise in bold? 14 A. Yes. 15 Q. Where it says Bill Wise, CEO, 16 MediaBank, his quote: They've become more 17 evil. End quote. 18 Did I read that right? 19 A. That appears to be the quote 20 that's written. 21 Q. And that appears to be his 22 answer to AdExchanger's question of: What 23 has been the impact of invite -- of the 24 Invite Media acquisition by Google a year 25 ago? Any surprises?</p>	<p style="text-align: right;">Page 244</p> <p>1 A. Hangout is the previous name of 2 Google's internal chat platform, I 3 believe. 4 Q. So before it was Google Chats, 5 it was Hangout? 6 A. That's my understanding, yes. 7 Q. Do you generally recall when 8 Hangout turned into Google Chats? 9 A. I don't know the timeline of 10 when that transition happened. 11 Q. When you first started at 12 Google, were you using Hangout or Google 13 Chats? 14 A. I used the messaging service 15 that's embedded inside of a corporate 16 email. I believe it was possibly called 17 G-chat and then subsequently called 18 Hangouts and is currently called Chat. I 19 don't know the details of the product 20 taxonomy and migrations of the product, 21 but I access is generally through my 22 corporate email as an adjacent product. 23 Q. So do you generally communicate, 24 one mode of communication with your team</p>
<p style="text-align: right;">Page 243</p> <p>1 Right, that's the -- that's the 2 question? 3 A. Yes, the question asked was: 4 What has been the impact of the Invite 5 Media acquisition by Google a year ago? 6 7 Q. And Mr. Wise's answer to that 8 question was, quote, They've become more 9 evil. 10 Right? 11 A. That's what's written on the 12 page, yes. 13 Q. So we've taken a look at, I 14 believe, one previous instance of you 15 using the internal Google Chats, right? 16 A. I believe that we had one 17 document that was internal chats, yes. 18 Q. So I take it from that that you 19 generally use chats? 20 MS. SALEM: Object to the form. 21 A. I use Chat to communicate with 22 colleagues. 23 Q. And have you ever used a chat 24 platform called Hangout?</p>	<p style="text-align: right;">Page 245</p> <p>1 that you supervise, do you use Chats? 2 A. I communicate with my team 3 through Chats, yes. 4 Q. What about -- what about other 5 teams at Google, do you communicate with 6 them through Chats as well? 7 A. Yes, I communicate with 8 colleagues through Chat. 9 Q. And what about your supervisors 10 or people above you, do you communicate 11 with -- using Chats with them? 12 A. I do. I communicate with Chat 13 with my colleagues. 14 Q. And do you ever use Chats to 15 communicate with customers or clients? 16 A. I don't use Chat to communicate 17 externally, to my knowledge, no. No 18 recollection of ever doing so. 19 Q. Have you ever heard anyone at 20 Google use the term, a non-attorney, ever 21 heard someone at Google using the term 22 "communicate with care"?" 23 A. Not expressly in a standalone 24 type format.</p>

<p style="text-align: right;">Page 246</p> <p>1           Q. So you never expressly heard 2 someone say "communicate with care" to 3 you? 4           A. Not those words in quotation 5 marks. 6           Q. So would you be surprised if -- 7 if you had heard those words then? 8           A. I would not be surprised if I've 9 had a part of trainings or onboardings 10 where people used the phrase "communicate 11 with care" to remind people to be 12 thoughtful about how they approach 13 conversations in any number of settings. 14           Q. So, can you expand on -- on 15 that? You said thoughtful about -- 16 thoughtful about how they approach 17 conversations. 18           Any more detail you can provide 19 about what "communicate with care" means? 20           MS. SALEM: Object to the form. 21           A. Again, I'm not referring to, I 22 would say, a trademark claim of the phrase 23 "communicate with care" to be specific. 24           You know, I think we generally</p>	<p style="text-align: right;">Page 248</p> <p>1           MS. SALEM: Object to the form. 2           A. I don't know. It would be 3 highly variable. It's based on my 4 calendar for the day. 5           Q. So if it's a -- a busy -- a busy 6 chat day, what's a ballpark estimate on 7 how many chats you would send? 8           A. Can you give a more specific 9 definition of how you consider a chat? 10           Q. Yeah, the communications going 11 through that Google Chat platform. 12           A. I understand it's a 13 conversational platform which means that 14 chats could be each individual message or 15 it could be individual conversations. 16           So if you could help me clarify, 17 sort of, what estimate you're looking for, 18 that would be helpful. 19           Q. I mean, it seems like from what 20 you're saying that whether it's a slow day 21 or busy day, that you're regularly using 22 Chats in the course of your normal 23 business, right? 24           MS. SALEM: Object to the form.</p>
<p style="text-align: right;">Page 247</p> <p>1           have concepts of being Googly, which 2 means communicating thoughtfully and 3 politely with individuals. 4           We also have confidential 5 information. Obviously that is 6 need-to-know on certain basis for 7 different teams, and so we would be 8 thoughtful about how we communicate and 9 careful about how we communicate certain 10 pieces of information to certain 11 individuals. 12           Q. Thoughtful about how you 13 communicate meaning make sure you don't 14 put it in -- in a written record, right? 15           MS. SALEM: Object to the form. 16           A. In the case of need-to-know 17 information, it would be thoughtful about 18 not communicating it to people who don't 19 need to know. 20           Q. How often do you use Chat? 21           A. I use Chat on a daily basis. 22           Q. On a given day, what's an 23 average number of chats you think you 24 send?</p>	<p style="text-align: right;">Page 249</p> <p>1           A. My use of Chat is commiserate 2 with my calendar and certain topics that 3 I'm working on. There are some days that 4 I would use Chat more than other days. 5           Q. But it's -- it's pretty typical 6 for you to be conduct your business in 7 your roles and responsibilities partly 8 through chat though, right? 9           MS. SALEM: Object to the form. 10           A. I use Chat as part of my role. 11 I don't consider Chat to be the way in 12 which I conduct business. 13           Q. But it's -- it's one of the ways 14 you -- in which you communicate your 15 business, right? 16           A. I communicate with colleagues 17 through Chat. It's not a way in which I 18 operate the business as a standalone 19 communication general platform. 20           Q. But you did tell me that you 21 think you use Chat daily, right? 22           A. I communicate with colleagues 23 through Chat on a daily basis. 24           Q. Does your chat platform, so</p>

1 2 Google Chats, does it have -- does it have 3 an option where you can turn the chat 4 history off? 5 A. My chat does not have the option 6 to turn off a chat history. 7 Q. Is that because you're on a 8 litigation hold? 9 A. I believe so. 10 Q. Before the -- when did Google 11 first tell you that you -- your chats were 12 being put on a litigation hold? 13 A. I don't recall the first time. 14 Q. Years -- years ago? Months ago? 15 A. I think years ago, yes. 16 Q. Before that litigation hold, do 17 you know if your chat history was turned 18 off? 19 A. I don't recall. 20 Q. You said that you used Chats to 21 communicate with -- with your team, your 22 supervisors, and other teams at Google, 23 right? 24 A. Can you read back the specific 25 testimony?	Page 250  1 the ordinary course of my business, but I 2 don't use Chat as an exclusive 3 conversation -- or as exclusive 4 communication form for the business. 5 Q. Before you got told to 6 litigation hold, do you recall if your 7 chat's history was turned off? 8 A. I do not recall. 9 Q. If you send -- and -- and you'll 10 be more familiar with this than I am. 11 So, chat history, I understand 12 that -- that chats can be retained or kept 13 by Google or not kept by Google, storage 14 so to speak, and that chat history has to 15 do about that retention of chats, right? 16 MS. SALEM: Object to the form. 17 A. I'm sorry, I don't quite 18 understand the question. 19 Q. Yeah. 20 So, what is -- what is -- what 21 does a chat history mean, if that's turned 22 on or off? 23 A. I'm not familiar with the 24 intricacies of the product and how it
1 2 Q. I'll just re-ask, allow you 3 to -- I'll just re-ask the question, and 4 just to the best of your ability answer my 5 question. 6 Do -- do you use Google Chat to 7 communicate within your team? 8 A. I use Google Chat to communicate 9 within my team. 10 Q. And what about with other teams 11 at Google, do you use Google Chat? 12 A. I use Google Chat to communicate 13 with colleagues at Google. 14 Q. And do you use Google Chat to 15 communicate with your supervisors and more 16 senior Google employees, right? 17 A. I use Google Chat to communicate 18 with my supervisors and some more senior 19 employees at Google. 20 Q. So in the ordinary course of 21 your business of directing product -- 22 global product sales and strategy, you 23 send chats, right? 24 MS. SALEM: Object to the form. 25 A. I use Chats to communicate about	Page 251  1 works. 2 As a user, my understanding is 3 that the -- the chat history has a record 4 of the conversation. 5 Q. And so if the chat history is 6 on, there's a record of the conversation, 7 right? 8 A. Again I'm not a product expert 9 on Chat. So I don't know the intricacies 10 what happens with regard to the toggle of 11 that specific setting. 12 Q. And -- and I -- I don't need to 13 know about the intricacies of it, more 14 just your experience as a user, user of 15 it. 16 Is that fair? 17 A. So, my experience of the chat 18 history is that if there isn't a chat 19 history, the chat isn't there to scroll 20 back up through. I don't recall how that 21 actually manifests. It's not something -- 22 a setting that I pay particular attention 23 to or have specific memories around. 24 Q. So I want to make sure we're on

1 2 the same page about this. 3 So, if the chat history is off, 4 there won't be any permanent storage of 5 that chat, right? 6 A. I'm not a -- 7 MS. SALEM: Object to the form. 8 A. I'm not a product manager. I 9 don't know how the settings of that 10 setting manifest itself from a product and 11 engineering perspective. 12 Q. But just as a user, a user of. 13 You said you use it daily. 14 So in the course of daily using 15 it, do you have any -- any idea about -- 16 about what happens to chat -- chat 17 histories -- chats where the history is 18 turned off? 19 A. My understanding is that if a 20 history for a chat is turned off, for 21 example I would not be able to access it 22 again. I don't have recollection of 23 trying to access a chat history, so I 24 don't know the details exactly of how that 25 operates.	Page 254	1 2 requiring the chat history to be on, do 3 you know if the default is to have the 4 chat history off? 5 A. I do not know. 6 Q. Whenever you first start -- when 7 you first started at Google, Google had 8 some sort of internal chat system, right? 9 A. I don't remember what the chat 10 system was, but I believe that there was 11 chat as part of Gmail, and Gmail was the 12 internal corporate system that we used. 13 We had the internal version of Gmail. 14 Q. So from your -- from your entire 15 history at Google, there's been some form 16 of -- of chat that you've used, right? 17 MS. SALEM: Object to the form. 18 A. I have conversed with colleagues 19 at Google through chats for as long as 20 I've been at Google. 21 Q. So since 2010? 22 A. I joined Google in June of 2010, 23 yes. 24 Q. So, I recall that you said that 25 you weren't able to give a -- an	Page 256
1 2 Q. Before the litigation hold, do 3 you recall purposely turning the history, 4 the chat history option on or off? 5 A. I don't have recollection of 6 specific settings of the chat history. 7 Q. Did anyone at Google ever 8 instruct you to turn a chat history off? 9 A. Not to my recollection. 10 Q. But you wouldn't be surprised if 11 it had happened? 12 MS. SALEM: Object to the form. 13 A. I don't have recollection of 14 anybody ever asking me to turn off my chat 15 history. 16 Q. Did anyone at Google ever 17 instruct you as a policy not to record a 18 chat discussing sensitive information? 19 A. No. 20 Q. Did you ever instruct anyone at 21 Google to not record a chat discussing 22 sensitive information? 23 A. No. 24 Q. For other Google employees 25 that -- that aren't on a litigation hold	Page 255	1 2 approximation of how many chats in a given 3 day you use. 4 Is that still your testimony? 5 A. I believe my testimony was that 6 I used Chat on a regular basis with 7 colleagues and if we had a more finite 8 definition of what we would want to give I 9 might be able to give one, but it's a 10 broad concept 'cause it's a conversation 11 and there's different ways to define a 12 chat. 13 Q. So if we just take this week, 14 yesterday, about how many chats do you 15 approximately think you sent yesterday? 16 A. Again, could you give me a 17 tighter definition of what you would 18 consider a chat? 19 Q. So, I -- I thought we 20 established -- are there multiple chat 21 platforms that you can use at Google 22 internally? 23 A. Sorry, I guess we could be 24 considered to be having a chat right now, 25 and every message is an individual	Page 257

<p style="text-align: right;">Page 258</p> <p>1 message. We could have had four or five 2 chats if we break each of our breaks into 3 different chats. 4 So it's hard for me to estimate 5 how many chats I have without having a 6 better understanding of what we consider 7 an entity that we would quantify as a 8 chat. 9 Q. So I would say, and I appreciate 10 the clarification, each -- each one of 11 your entries in a conversation where we're 12 having a back and forth, each time you -- 13 you see something from a colleague and you 14 type at the computer and hit -- hit 15 "Enter" and that goes out, I would 16 consider that what I'm saying as one chat. 17 A. Okay. 18 So each individual message sent 19 in a conversation with the various 20 entities that I am conversing with. 21 Q. Yes, sir. 22 A. I think it's reasonable to think 23 that on some days I have hundreds of 24 chats, by that definition.</p>	<p style="text-align: right;">Page 260</p> <p>1 Q. Whether it's a single chat or 2 one conversation being a document, six 3 million documents quite a bit of paper, 4 isn't it? 5 A. Quite a bit's a relative term. 6 I'm not a lawyer familiar with 7 complex litigation, so I don't know if six 8 million is a lot or not in the relative 9 nature of the case. 10 Q. I'll tell you as a lawyer that 11 six million is still a lot. 12 Did you know that of that six 13 million, only about 13,000 of those 14 documents are chats? 15 MS. SALEM: Object to the form. 16 A. No. 17 Q. Does that 13,000 number surprise 18 you? 19 MS. SALEM: Object to the form. 20 A. I'm not a lawyer. I don't have 21 any experience in complex litigation, 22 documents, or discovery. So I'd have no 23 grounds to be surprised by anything with 24 regard to the documents or discoveries in</p>
<p style="text-align: right;">Page 259</p> <p>1 Q. On a given day, how many -- how 2 many different people do you think you are 3 generally having Chat conversations with? 4 A. Vary greatly on the day. Most 5 days probably less than a handful. 6 Q. Handful being five? 7 A. Sure, less than five on a given 8 day. 9 Some days I might have chats 10 with more people. 11 Q. Are you generally aware of how 12 many documents Google has produced in this 13 case? 14 A. No, I'm not. 15 Q. If I represented to you that the 16 number is hovering right around six 17 million documents, do you have any reason 18 to not believe me? 19 A. I don't have a definition of 20 what would be considered a document, and 21 it could be as nuanced as what would be 22 considered a chat, and so I wouldn't have 23 any grounds to have an opinion on any 24 number.</p>	<p style="text-align: right;">Page 261</p> <p>1 the case. 2 Q. Would you say it could be that 3 low because Google did not preserve those 4 chats? 5 MS. SALEM: Object to the form. 6 A. I'd have no comment on the 7 documents or the quantity of documents 8 because I'm not an attorney and I don't 9 have familiarity with documents, 10 discovery, or complex litigation. 11 Q. You don't have to have all those 12 titles to know that 13,000 of six million 13 is a very small fraction, right? 14 A. I don't know much or anything 15 about documents, discovery, and complex 16 litigation, so I don't know what would be 17 considered a small fraction in the 18 relative nature of this topic. 19 Q. I'll just make it really simple. 20 If you take 13,000 divided by 21 six million that's a tiny percentage, 22 right? Just -- 23 MS. SALEM: Object. 24 Q. That's just the -- there's the</p>

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<p style="text-align: right;">Page 290</p> <p>1 2 "malarky," Mr. [REDACTED] is saying that 3 you're -- with that history -- history 4 on/off nonsense, is that applying the 5 definition correctly?</p> <p>6 A. I don't know if [REDACTED] was using 7 the Oxford definition of the word 8 correctly in this chat.</p> <p>9 Q. So on the next page, Bates down 10 at the bottom reads 8647135, the third 11 from the bottom it's a chat -- or it 12 starts with "my question for [REDACTED]."</p> <p>13 Do you see that?</p> <p>14 A. I see that.</p> <p>15 Q. And that's a chat you sent, 16 right?</p> <p>17 A. That's a chat that I sent.</p> <p>18 Q. It says: [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 I read that correctly, right?</p> <p>22 A. That's what the text reads.</p> <p>23 Q. Who is [REDACTED]?</p> <p>24 A. [REDACTED]</p> <p>25 [REDACTED].</p>	<p style="text-align: right;">Page 292</p> <p>1 2 expectation that they would come and join 3 me in a meeting. And so there's a 4 formality at times.</p> <p>5 However, generally I think of 6 chat as more conversational and certainly 7 nothing that's ever used for 8 decision-making processes.</p> <p>9 Q. Like you wouldn't -- you're less 10 likely to use the F-word or emojis in an 11 email, right?</p> <p>12 MS. SALEM: Object to form.</p> <p>13 A. I have been known for my 14 colorful language at time to time, and I 15 certainly am a friend of what could be 16 described as emojis or pictures from time 17 to time, and I use them in both email and 18 chat.</p> <p>19 I would say that I converse in a 20 more colloquial manner when I converse 21 over chat than I might converse over email 22 simply based on the pace of the 23 conversation.</p> <p>24 Q. So, when you -- going back to 25 that top one that was -- that you updated,</p>
<p style="text-align: right;">Page 291</p> <p>1 2 Q. Who is [REDACTED]?</p> <p>3 A. [REDACTED]</p> <p>4 [REDACTED].</p> <p>5 Q. Now, the -- the next page the 6 very top, the very top one it says: Take 7 our ball and just F-ing go home.</p> <p>8 Do you see that?</p> <p>9 A. Yes. I believe it says the word 10 "fucking."</p> <p>11 Q. And that's a -- a chat that you 12 sent on February 14th, 2023, right?</p> <p>13 A. It appears to be.</p> <p>14 And I subsequently edit it and 15 removed the curse word.</p> <p>16 Q. I see that on the next chat 17 down.</p> <p>18 And so we're -- would you say 19 that chats are essentially more informal 20 than emails?</p> <p>21 A. I think that's a broad 22 characterization. If I were to request 23 time with a subordinate employee and I 24 were to ask them to come and join me via 25 an email or a chat, I would have the same</p>	<p style="text-align: right;">Page 293</p> <p>1 2 edited to say "take our ball and just go 3 home," were you saying here that [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED]?</p> <p>7 A. No, I was not.</p> <p>8 Q. What does it mean to take your 9 ball and just go home then?</p> <p>10 A. Take your ball and go home is to 11 stop playing a game. In colloquialism it 12 refers to being at the playground and 13 removing your ball and going home so that 14 kids can't continue to play stickball or 15 baseball or football.</p> <p>16 In this context I used 17 admittedly colorful language to make a 18 point about [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED].</p> <p>25 Q. Here what is -- what is Google's</p>

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1 2 litigation hold by Google, did you start 3 moving conversations off the record so 4 they wouldn't be produced in this lawsuit? 5 A. No. 6 Q. Just your colleagues did that, 7 right? 8 MS. SALEM: Object to the form. 9 A. That's not my understanding of 10 [REDACTED]'s message. 11 MR. ROBINSON: I'll move to 12 another exhibit. The Bates stamp is 13 GOOG-NE-12976885. 14 (Exhibit 60, chat thread 15 9/18/2019, Bates GOOG-NE-12976885-887, 16 was marked for identification, as of 17 this date.) 18 EXHIBIT TECHNICIAN: Can I get 19 that one more time, counsel? 20 MR. ROBINSON: Yeah, sure thing. 21 It's GOOG-NE-12976885. 22 EXHIBIT TECHNICIAN: I don't 23 appear to have that one. 24 MS. YOUNG: Give us one second, 25 we'll send it to you.	1 2 Q. Do you see that it appears to be 3 a chat thread with the -- at the top it 4 says from [REDACTED] dated September 18th, 5 2019? Do you see that? 6 A. I do. 7 Q. And this appears to be a chat 8 thread between you and three other Google 9 employees, right? 10 A. It does. 11 Q. And the very first chat says: 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED]. 19 Did I read that correctly? 20 A. Yes, I believe you did. 21 Q. [REDACTED] 22 [REDACTED]? 23 A. Correct, [REDACTED] 24 [REDACTED]. 25 Q. And the next chat down it says:
Page 299	Page 301
1 2 EXHIBIT TECHNICIAN: Do you want 3 to go off the record? Because it 4 takes me a little bit to put it into 5 the system. 6 MR. ROBINSON: That's fine. 7 THE VIDEOGRAPHER: The time 8 right now is 3:05 p.m. 9 We are off the record. 10 (Recess taken.) 11 THE VIDEOGRAPHER: The time 12 right now is 3:17 p.m. 13 We are back on the record. 14 BY MR. ROBINSON: 15 Q. Mr. [REDACTED], right before the 16 break, I handed you, or you were handed a 17 new exhibit, right? 18 A. I didn't get the exhibit before 19 the break, but it appears to be next to me 20 now. 21 Q. Did you talk about this exhibit 22 with your attorneys during the break? 23 A. I did not. 24 Q. Do you recognize this document? 25 A. I do not.	1 2 [REDACTED] 3 [REDACTED] 4 [REDACTED]. 5 Now, do you see that it appears 6 that maybe some characters in here get -- 7 get error coded to look like something 8 different? 9 A. Yes, it believes that 10 potentially the apostrophe gets error 11 coded into an ampersand pound sign 39 end 12 colon. 13 Q. And same with that when it says 14 [REDACTED] 15 [REDACTED] is probably 16 supposed to be just a quotation mark, 17 right? 18 A. I believe, yes, that that's 19 supposed to be quotation mark and was 20 broken in transcription. 21 Q. So you were chatting with [REDACTED] 22 [REDACTED], [REDACTED], and [REDACTED] 23 about [REDACTED], right? 24 A. I was chatting with them based 25 on the message about feedback that was

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1  
2        C E R T I F I C A T E  
3 STATE OF NEW YORK  
4 COUNTY OF NEW YORK  
5  
6        I, Marie Foley, RMR, CRR, a  
7 Certified Realtime Reporter and Notary  
8 Public within and for the State of New  
9 York, do hereby certify:  
10        THAT [REDACTED], the witness  
11 whose deposition is hereinbefore set  
12 forth, was duly sworn by me and that such  
13 deposition is a true record of the  
14 testimony given by the witness.  
15        I further certify that I am not  
16 related to any of the parties to this  
17 action by blood or marriage, and that I am  
18 in no way interested in the outcome of  
19 this matter.  
20        IN WITNESS WHEREOF, I have  
21 hereunto set my hand this 8th day of  
22 April, 2024.

23  
24        *Marie Foley, RMR CRR*  
25        MARIE FOLEY, KMR, CRR

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2        LAWYER'S NOTES  
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